

CHAPTER THREE – PERSONNEL POLICIES

SUBCHAPTER 3.06 – LEAVES

Division 1: General

3.06.010 Inconsistent Actions; Failure to Return to Work

An employee may not take any action during a leave of absence that is inconsistent with an intention to return to employment with the Town, such as accepting employment with another employer or failing without authorization to return after expiration of leave. An employee who takes any action during his or her leave of absence that is inconsistent with an intention to return to employment with the Town may be terminated.

3.06.020 Exhaustion of Paid Leave

An employee who is absent from work may be required to use his or her accrued and available sick leave, Personal Leave and compensatory time off.

3.06.030 General Rule for Accruing Leave

(a) An employee must be in paid status in order to earn and accrue paid leave of any type. An employee who has exhausted all paid leave shall not earn any paid leave until he or she has returned to paid status.

(b) An employee will not accrue vacation or sick leave, nor will the employee be paid for holidays that occur during the employee's leave of absence except during those periods when the employee is on paid sick leave, Personal Leave or compensatory time off.

3.06.040 Unpaid Leave of Absence

(a) An employee taking an unpaid leave of absence may request or be required to use his or her accumulated and available sick leave, Personal Leave, or compensatory time off.

(b) An employee is not entitled to an unpaid leave of absence except as expressly provided in this Subchapter or where granted by the City Manager for good cause.

3.06.050 Coordination of Benefits

(a) Workers' compensation and State Disability Insurance benefits will be integrated with paid leaves described in this Subchapter so that an employee does not receive over 100 percent of the employee's regular pay.

(b) When an employee has suffered an illness or injury, has received payment from the Town for sick leave or other paid leave, and has received payment under the Workers' Compensation Act or the State Disability Act, the workers' compensation or disability payment must be turned over to the Town and the Town will reinstate sick leave or other paid leave to the extent of the employee's workers' compensation or disability payments.

- (c) Payments under a long-term disability insurance policy are not subject to coordination of benefits by the Town but may be reduced by the insurance carrier.

3.06.060 Conflicting Provisions

In the event of a conflict between the provisions of this Subchapter and any collective bargaining agreement, the terms and conditions of the collective bargaining agreement shall apply. Without limiting the generality of the foregoing, the following sections of this Subchapter shall not apply to employees represented by a Recognized Employee Organization: 3.06.080, 3.06.090(d), 3.06.110, 3.06.210, and 3.06.260.

3.06.070 General Rules of Eligibility; Prorated Paid Leave

- (a) Except as expressly provided herein, regular and probationary employees are eligible for paid leaves provided in this Subchapter, while casual and temporary employees are not eligible for paid leave.
- (b) Paid leave for a part-time employee shall be prorated according to the employee's Full-Time Equivalency.

Division 2: Holidays

3.06.080 Holiday Leave

- (a) Regular and probationary employees are entitled to holiday pay as provided in this section. Town holidays are set forth in section 1.01.050 of the Colma Municipal Code.
- (b) An exempt employee who observes a Town holiday shall be entitled to his or her regular monthly salary.
- (c) A non-exempt employee who was in paid status the workday before and the workday after a Town holiday shall be paid for the holiday. If the non-exempt employee worked full-time, the employee shall be paid for a full day. If the non-exempt employee worked part-time, the employee's holiday pay shall be prorated at his or her Full-Time Equivalency.
- (d) Regular and probationary employees required to work on a Town holiday will be paid an amount equal to one and one-half times his or her regular rate of pay, which shall be in addition to holiday pay to which he or she is entitled.

Division 3: Sick Leave

3.06.090 Sick Leave Eligibility

- (a) A regular or probationary full-time employee who is in full-time paid status shall earn paid sick leave at the rate of eight hours per month.

(b) A regular or probationary part-time employee who is in paid status shall earn sick leave prorated at his or her Full-Time Equivalency.

(c) While an eligible employee is using sick leave to which he or she is entitled, the employee will be paid at his or her regular rate of pay for each hour of sick leave used.

(d) An eligible employee may accrue sick leave up to a maximum of 1,040 hours. An employee who has accrued 1,040 hours of unused sick leave shall not earn additional sick leave unless and until he or she has an accrued balance of less than 1,040 hours of unused sick leave.

3.06.100 When Sick Leave May Be Used

(a) An eligible employee may use his or her sick leave for any of the following reasons:

- (1) An illness or injury which makes the employee unable to fully perform the essential functions of his or her job duties;
- (2) For an appointment with a health care provider or for a medical procedure, provided that if the appointment or procedure is foreseeable, the employee must have made a reasonable effort to schedule it during non-work hours and so as not to unduly disrupt the Town's operations;
- (3) To care for a newborn child or a newly placed child; or
- (4) To care for a child, parent, spouse or Registered Domestic Partner who is ill.

(b) Notwithstanding the foregoing, the maximum amount of sick leave which an employee may use to care for a child, parent, spouse or Registered Domestic Partner shall be six months worth of his or her accrued and available sick leave in a calendar year.

(c) For purposes of this section:

- (1) A "child" is a biological, foster or adopted child, a stepchild, a legal ward, a child of a Registered Domestic Partner, or a child of a person standing in the place of a parent; and
- (2) A "parent" is a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

[Reference: LABOR CODE § 233]

3.06.110 Conversion or Payment for Unused Sick Leave

Upon separation of employment with the Town, an employee is not entitled to be paid for his or her accrued and unused sick leave except as follows: an employee who is eligible for and who has applied for retirement under CalPERS within 60 days of separation from the Town of Colma may, at the employee's option, convert unused and accrued sick leave to additional PERS

service credit or be paid for unused and accrued sick leave, provided that the number of hours to be converted or paid shall not exceed 1,040 hours.

3.06.120 Sick Leave Not to Extend Family and Medical Leave

Nothing in this Division shall extend the maximum period of leave to which an employee is entitled under the California Family Rights Act (CFRA), the federal Family and Medical Leave Act (FMLA), or this Subchapter, whether or not the employee received sick leave compensation during that period.

3.06.130 Reporting Requirements

(a) Any employee taking sick leave shall notify his or her supervisor in accordance with rules established by the City Manager. An employee who is on sick leave shall keep his or her supervisor advised as to his or her condition and expected date of return to duty. A non-exempt employee shall report sick leave taken on his or her time sheet, and an exempt employee shall report sick leave taken on his or her Exception Report.

(b) An eligible employee who is on sick leave for a period exceeding three consecutive days may be required to provide a certificate from his or her health care provider verifying the need for the absence from work and releasing the employee to return to duty. Except where sick leave is taken for an occupational disability, the certificate need not disclose the underlying diagnosis of the patient's condition.

(c) The Town may require the employee to participate in a fitness-for-duty examination by a doctor selected by the Town before allowing the employee to return to work.

3.06.140 Prevention of Sick Leave Abuse

(a) The City Manager shall establish guidelines for identifying and correcting abuse of sick leave.

(b) If sick leave abuse is identified, corrective action will be taken, including requiring the employee to submit a doctor's statement for each use of sick leave or to participate in a fitness-for-duty examination by a doctor selected by the Town.

Division 4: Family, Medical and Pregnancy Leaves

3.06.150 Family and Medical Leaves of Absence

(a) *Eligibility and Terms of Leave.* Regular employees who have been employed for at least 12 months, and who have worked 1,250 hours in the last 12 months, are eligible to take an unpaid leave of absence of up to 12 work weeks in a 12-month period subject to the requirements of this Division.

(b) *Permitted Reasons for Leave.* An employee eligible for leave under this section may take a leave of absence for any of the following reasons:

- (1) The birth of a child of the employee, and to care for a newborn;

- (2) The placement of a child with an employee in connection with the adoption or foster care of a child by the employee;
- (3) To care for a child, parent, spouse, or Registered Domestic Partner who has a serious health condition, as defined by 29 C.F.R. 825.114; or
- (4) Due to the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her position.

(c) *Advanced Notice.* Whenever possible, the employee must provide at least 30 days advance written notice of the employee's need to take a leave of absence under this Division for foreseeable events (such as the expected birth of a child or a planned medical treatment for the employee or a member of the employee's family). If an employee requests a leave of absence that is foreseeable because of a scheduled medical procedure, the employee must make a reasonable effort to schedule it so that it will not unduly disrupt Town operations, subject to the approval of the employee's health care provider. For events which are unforeseeable, the employee must notify the City Manager and his or her supervisor, at least verbally, as soon as the employee learns of the need for the leave.

(d) *Request for Leave.* Regardless of the nature of the leave of absence and in addition to the advanced notice, an employee must submit a written Request for Leave of Absence to the City Manager, with a copy to his or her supervisor, as soon as possible.

(e) *Request and Certification.* The employee must also submit written certification from the patient's health care provider, or another qualified person approved by the City Manager, containing the following information:

- (1) The date on which the qualifying condition began or will begin;
- (2) The probable duration of the qualifying condition; and
- (3) In situations where the leave is due to the employee's own condition, a statement that, due to the employee's serious health condition, the employee is (or will be) unable to perform the essential functions of the employee's position.

(f) *Intermittent Schedule.* If the employee requests intermittent leave or leave on a reduced-time leave schedule, the employee also must provide certification of the medical necessity for either kind of leave, its expected duration, and, if applicable, the date on which the patient's medical treatment is to be given and the duration of the treatment. If an appropriate medical certification is provided, an employee may take medical leave on an intermittent basis or use a reduced-time schedule, that is, work fewer hours per day or per week than the employee's usual schedule requires.

(g) *Additional Time.* If the employee needs additional leave after the time stated in the employee's original certification, the employee must submit re-certification containing the information outlined above.

(h) *Periodic Reports.* If an employee is granted a leave of absence, he or she may be required to provide periodic medical reports, as requested by the Town, which describe the patient's continuing serious health condition and expected date of return to work.

(i) *Non-compliance.* Failure to comply with these rules is grounds for, and may result in, deferral of the requested leave until the employee complies with these rules.

(j) *Limited Continuation of Benefits.* The Town will maintain the employee's group health benefits during the first 12 work weeks of any leave of absence taken during the relevant 12-month period under this section on the same terms and conditions of coverage that would prevail had the employee not gone on leave.

(k) *Special Rules for Newborns, etc.*

(1) Employees who take a leave to care for a newborn child or a newly placed child, and whose spouses also are employed by the Town, are entitled to a combined total of 12 work weeks.

(2) Leave to care for a newborn or a newly placed child must be initiated within one year of the birth or placement.

(l) *Return to Work.* When the employee is ready to return to work from an authorized leave of absence under this Division, and where the leave was due to the employee's own condition, the employee must present certification from the employee's physician that the employee is able to safely perform all of the essential functions of the employee's position, or can do so with reasonable accommodation. The Town may require the employee to participate in a fitness-for-duty examination by a doctor selected by the Town before allowing the employee to return to work.

(m) *Reinstatement.* If an employee takes an authorized leave of absence under this Division, the employee is entitled to reinstatement upon the employee's return from leave, unless one of the following conditions exists:

(1) The employee's job has ceased to exist for legitimate business reasons;

(2) The employee's job could not be kept open or filled by a temporary employee without substantially undermining the Town's ability to operate safely and efficiently;

(3) The employee has directly or indirectly indicated the employee's intention not to return to the employee's job;

(4) The employee is no longer able to perform the essential functions of the employee's job with or without reasonable accommodation; or

(5) The employee is no longer qualified for the job.

(n) *Placement in Similar Position.* If the Town cannot reinstate an eligible employee to the employee's job, the Town will offer the employee a substantially similar position provided that:

- (1) A substantially similar position exists and is available,
- (2) Filling the available position would not substantially undermine the Town's ability to operate safely and efficiently, and
- (3) The employee is qualified for the position.

(o) *Key Employee.* A key employee, as defined by 29 C.F.R. 825.217, may not be entitled to reinstatement.

[Reference: 29 C.F.R. 825.100 *et seq.*]

3.06.160 Pregnancy Disability Leave

(a) *Eligibility and Terms of Leave.* A female employee is entitled to an unpaid pregnancy disability leave during the time that the employee is actually disabled on account of pregnancy, childbirth, or related medical conditions, up to a maximum period of four months. The employee may take this leave, as needed, for all disabilities related to each pregnancy. The leave does not have to be taken in one continuous period of time.

(b) *Coordination with FMLA and CFRA Leaves.* FMLA leave may run concurrently with Pregnancy Disability Leave, however, CFRA leave does not run based on disability due to pregnancy. Upon the birth of a child, a female employee may request CFRA bonding leave. CFRA bonding leave need not be taken right after the baby is born, but must be concluded within one year of the child's birth.

Division 5: Personal Leaves

3.06.170 Eligibility for Vacation Leave

(a) A regular or probationary full-time employee who is in paid status shall earn vacation leave as follows:

- (1) From date of hire through the fifth year of continuous service with the Town, at the rate of 80 hours per year;
- (2) From the sixth through the tenth year of continuous service with the Town, at the rate of 120 hours per year;
- (3) From the eleventh through the fifteen year of continuous service with the Town, at the rate of 160 hours per year; and
- (4) After fifteen years of continuous service with the Town, at the rate of 200 hours per year.

(b) A regular or probationary part-time employee who is in paid status shall earn vacation leave prorated at his or her Full-Time Equivalency (FTE).

(c) A regular or probationary part-time employee shall accrue vacation time at the end of each pay period.

(d) An employee may not take vacation leave until completion of six months of service without the City Manager's approval.

(e) Upon resignation or retirement from Town employment, an employee shall be paid at the normal rate of pay for his or her unused vacation time.

3.06.180 Administering Vacation Leave

(a) An employee must submit a request to take vacation leave to his or her Department Director for approval a reasonable time prior to the commencement of the requested vacation.

(b) A Department Director must submit a request to take vacation leave to the City Manager for approval a reasonable time prior to the commencement of the requested vacation.

(c) The City Manager shall provide reasonable advance notice to the City Council before he or she takes vacation leave.

(d) The person reviewing a request for vacation shall consider the requirements of the Town and the efficiency of Town operations as well as the wishes of the employee.

3.06.190 Management Leave

(a) All unrepresented, exempt, regular employees placed in the *Managerial, Professional and Confidential Employees Unit* pursuant to the Town's Employer-Employee Relations Resolution (Resolution 98-40 or any successor EERR), shall annually be granted 80 hours of management leave, up to a maximum of 80 hours ("cap").

(b) Management leave shall be credited to an eligible employee in advance, as follows:

(1) In a prorated amount on the date of hire; and

(2) In the full amount on January 1 of each calendar year thereafter.

(c) The Town shall grant each eligible employee ten days of management leave per year, less the employee's management leave balance at close of business on December 31, if any. Management leave shall be earned and accrued on January 1 of each year only. If an employee has a management leave balance at close of business on December 31, that balance shall be carried over to January 1, and the number of hours of management leave that will be granted to an employee will be ten days minus the balance carried over from December 31 to January 1.

(d) On termination of employment, any unused management leave shall be paid.

3.06.200 Floating Holidays

- (a) All unrepresented, regular, non-exempt employees placed in the *Managerial, Professional and Confidential Employees Unit* or the *Maintenance Unit* pursuant to the Town's Employer-Employee Relations Resolution (Resolution 98-40 or any successor EERR), shall be granted three floating holidays each calendar year as provided in this section, up to a maximum of three days ("cap").
- (b) A regular or probationary part-time employee who is in paid status shall be granted floating holidays prorated at his or her Full-Time Equivalency (FTE).
- (c) The Town shall grant each eligible employee three floating holidays per year, less the employee's floating holiday balance at close of business on December 31, if any. Floating holidays shall be earned and accrued on January 1 of each year only. If an employee has a floating holiday balance at close of business on December 31, that balance shall be carried over to January 1, and the number of hours of floating holidays that will be granted to an employee will be three days minus the balance carried over from December 31 to January 1.
- (d) On termination of employment, any unused floating holidays shall be paid.

Division 6: Leaves for Public Duties

3.06.210 Election Officer Leave

- (a) An employee may take unpaid leave to serve as an Election Officer in a local, special or statewide election.
- (b) An employee who knows or has reason to believe that he or she will be an Election Officer shall give at least five days' advance notice to the employee's supervisor.
- (c) An employee may take accrued paid leave, except sick leave, to serve as an Election Officer.

[Reference: ELECTIONS CODE § 12312]

3.06.220 Jury Duty Leave

- (a) A regular or probationary employee who is called for jury duty shall be granted paid leave.
- (b) Juror leave pay for part-time employees shall be prorated at his or her Full-Time Equivalency.
- (c) A probationary employee called to serve on jury duty will have his or her probationary period extended by the same amount of time as required for serving on jury duty.
- (d) The employee shall relinquish to the Town all juror fees to the Town, excluding mileage fees.

(e) If excused as a juror on any given day, the employee is expected to contact his or her supervisor and to report to work as instructed.

3.06.230 Leave to Attend Court as a Witness

(a) A regular or probationary employee who is required to appear in court or at an administrative proceeding in any action arising out of the course and scope of his or her employment shall be paid as being on duty. The employee shall turn over to the Town any witness fees received by the employee for attendance at court or an administrative hearing. Payments for travel expenses shall be retained by the employee.

(b) A regular or probationary employee who is required to appear in court or at an administrative proceeding in any action not arising out of the course and scope of his or her employment may request or be required to take Personal Leave, and/or compensatory time for any time off.

3.06.240 Leave Time for Voting

(a) If a regular or probationary employee does not have sufficient time outside working hours to vote at a federal, statewide or local election, then he or she may, without loss of pay, take off enough working time to enable him or her to vote.

(b) No more than two hours of the time taken off for voting shall be with pay. If additional time is needed, an employee may request use of his or her available Personal Leave.

(c) Employees shall give their supervisor at least two business days notice. The supervisor will determine if time off will be allowed at the beginning or end of the shift. If the employee fails to provide proper notice, the employee will be required to use his or her available Personal Leave and/or compensatory time off.

[Reference: ELECTIONS CODE § 14000]

Division 7: Other Leaves

3.06.250 Bereavement Leave

(a) A regular or probationary employee in paid status shall receive up to three work days off with pay as bereavement leave to arrange and/or attend funeral activities for a member of his or her immediate family.

(b) A regular or probationary part-time employee in paid status shall earn bereavement leave prorated at his or her Full-Time Equivalency (FTE).

3.06.260 Administrative Leave

(a) The City Manager may, in his or her sole discretion, place an employee on paid administrative leave on any of the following grounds:

- (1) Pending investigation and review of a potential disciplinary action;
- (2) Pending a determination of the employee's fitness for duty; or
- (3) When the City Manager determines that it is in the best interests of the Town or in the interest of public safety to immediately remove the employee from Town service.

(b) The City Manager may, after providing the appropriate level of due process, place an employee on unpaid administrative leave, or change paid administrative leave to unpaid administrative leave, in any of the following circumstances:

- (1) When the employee is unable or unwilling to perform the essential functions of his or her job;
- (2) When the employee takes any action which is inconsistent with his or her status as an employee of the Town; or
- (3) When the employee engages in misconduct, on or off-duty, which is detrimental to the public service.

(c) An employee on paid administrative leave will have a workweek beginning at one minute after midnight Monday and ending at midnight the following Sunday, and must be available for assignment and able to appear in Colma within two hours of notification, Monday through Friday, except holidays, from 8:00 AM until 4:30 PM (excepting lunch time). An employee on paid administrative leave may, at the sole discretion of his or her Department Director, be required to attend court or administrative hearings relating to the Town's affairs or may be required to be present in Colma for an assignment. An employee on administrative leave who is not so available shall not be entitled to pay during that time but may take his or her unused Personal Leave, unused sick leave or compensatory time off.

